



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R06-OAR-2015-0142; FRL-9954-66-Region 6

Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Infrastructure and Interstate Transport for the 2012 Fine Particulate Matter and Interstate Transport for the 2010 Sulfur Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve and disapprove elements of State Implementation Plan (SIP) submissions from the State of Oklahoma for the 2012 Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS or standard) and the 2010 Sulfur Dioxide (SO₂) NAAQS. The 2012 PM_{2.5} submission addresses how the existing SIP provides for implementation, maintenance, and enforcement of this NAAQS (infrastructure SIP or i-SIP). The i-SIP ensures that the Oklahoma SIP is adequate to meet the State's responsibilities under the Federal Clean Air Act (CAA). The majority of the 2010 SO₂ submission was addressed in a separate rulemaking, only the visibility component listed in 110(a)(2)(D)(i)(II) is being addressed in this action.

We are proposing to disapprove the visibility component of 110(a)(2)(D)(i)(II), often referred to as prong 4. We are also proposing to disapprove the portion of the January 28, 2015 SIP submission from Oklahoma for the 2010 Sulfur Dioxide (SO₂) NAAQS only as it addresses Section 110(a)(2)(D)(i)(II) for visibility protection.

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2015-0142, at <http://www.regulations.gov> or via email to Donaldson.tracie@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Tracie Donaldson, (214) 665-6633, Donaldson.tracie@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The docket index and publicly available docket materials for this action are available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, 214-665-6633, Donaldson.tracie@epa.gov. To inspect the hard copy materials, please schedule an appointment with her or Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: In this document “we,” “us,” and “our” means the

EPA.

I. Background

On October 17, 2006, following a periodic review of the NAAQS for PM_{2.5}, EPA revised the PM_{2.5} NAAQS. The 24-hour standard was revised to 35 micrograms per cubic meter (µg/m³), and the annual standard was revised to 15 µg/m³ (71 FR 61144). On December 14, 2012, we promulgated a revised primary annual PM_{2.5} NAAQS (78 FR 3086). The primary annual standard was revised to 12.0 µg/m³, and we retained the 24-hour PM_{2.5} standard of 35 µg/m³ (78 FR 3086). For more information on this standard, please visit <https://www.epa.gov/criteria-air-pollutants>. Oklahoma submitted an i-SIP revision on June 16, 2016 to address this revised NAAQS.

On June 22, 2010, we revised the primary NAAQS for SO₂ to establish a new 1-hour standard at a level of 75 ppb, based on the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations (75 FR 35520).

Pursuant to section 110(a)(1) of the CAA, states are required to submit i-SIPs that provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3 years following the promulgation of such new or revised NAAQS. Section 110(a)(2) lists specific requirements that i-SIPs must include to adequately address such new or revised NAAQS, as applicable. In an effort to assist states in complying with this requirement, EPA issued guidance addressing the i-SIP.

Our technical evaluation of the Oklahoma 2012 PM_{2.5} submittal is provided in the Technical Support Document (TSD), which is in the docket for this rulemaking.¹ Section

¹ Additional information on: EPA's approach for reviewing i-SIPs; the details of the SIP submittal and EPA's evaluation; the effect of recent court decisions on i-SIPs; the statute and regulatory citations in the Oklahoma SIP specific to this review; the specific applicable CAA and EPA regulatory citations; *Federal Register* citations for

110(a)(2)(D)(i)(I), which addresses the contribution to nonattainment and interference with maintenance of the 2012 PM_{2.5} NAAQS in other states; was not included in this submittal and will be addressed by Oklahoma in a separate submittal.

II. EPA's Evaluation of the Oklahoma PM_{2.5} i-SIP and Interstate Transport Submittals

The State's submittal on June 16, 2016 demonstrates how the existing Oklahoma SIP meets the infrastructure requirements for the 2012 PM_{2.5} NAAQS. A summary of our evaluation of the Oklahoma SIP for each applicable element of CAA section 110(a)(2)(A)-(M) follows.

(A) Emission limits and other control measures: CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act, and other related matters as needed to implement, maintain and enforce each of the NAAQS.² The Oklahoma Clean Air Act (OCAA) provides the Oklahoma Department of Environmental Quality (ODEQ) with broad legal authority, to establish and implement air quality programs and enforce regulations it has promulgated. The ODEQ has authority to: adopt emission standards and compliance schedules applicable to regulated entities; adopt other measures necessary for attainment and maintenance of the NAAQS; enforce applicable laws, regulations, standards and compliance schedules; and seek injunctive relief.³

The approved SIP for Oklahoma is documented at 40 CFR Part 52.1920, Subpart LL. Most of the State's air quality rules and standards are codified at Title 252, Chapter 100 of the Oklahoma

Oklahoma SIP approvals; Oklahoma minor New Source Review program and EPA approval activities; and Oklahoma Prevention of Significant Deterioration (PSD) program can be found in the TSD.

² The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an i-SIP, we are not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the Oklahoma SIP has basic structural provisions for the implementation of the NAAQS.

³ Please see the TSD for our complete analysis and citations to the specific provisions.

Administrative Code (denoted OAC 252:100). A detailed list of the applicable rules at OAC 252:100 and elsewhere in the OAC, along with the citations for approval into the SIP, is provided in Table 1 of the TSD.

(B) Ambient air quality monitoring/data system: CAA section 110(a)(2)(B) requires SIPs to provide for establishment and implementation of ambient air quality monitors, collection and analysis of monitoring data, and providing such data to EPA upon request. The OCAA provides the authority allowing the ODEQ to collect air monitoring data, quality-assure the results, and report the data.⁴ The ODEQ maintains and operates a monitoring network to measure ambient levels of the pollutants in accordance with EPA regulations which specify siting and monitoring requirements. All monitoring data is measured using EPA approved methods and subject to EPA quality assurance requirements. The ODEQ submits all required data to EPA in accordance with EPA regulations. The monitoring network was approved into the SIP and undergoes annual review by EPA.⁵ In addition, 40 CFR 58.10(d) requires that state assess their monitoring network every five years. The ODEQ submitted their 5-year monitoring network assessments to us on April 11, 2016. Our comments on the 5-year assessment, dated July 22, 2016, are in the docket for this rulemaking.⁶ The ODEQ website identifies Oklahoma's ambient monitor locations, and provides past and current concentrations of criteria pollutants measured by the State's monitors.⁷

(C) Program for enforcement: CAA section 110(a)(2)(C) requires SIPs to include the following three elements: (1) a program providing for enforcement of the measures in paragraph A above; (2) a program for the regulation of the modification and construction of stationary

⁴ Please see the TSD for our complete analysis and citations to the specific provisions.

⁵ A copy of the 2016 Annual Air Monitoring Network Plan and EPA's approval letter are included in the docket for this proposed rulemaking.

⁶ A copy of the ODEQ's 5-year monitoring network assessment and EPA's evaluation are included in the docket for this proposed rulemaking.

⁷ see http://www.ODEQ.Oklahoma.gov/airquality/monops/sites/mon_sites.html and http://www17.ODEQ.Oklahoma.gov/tamis/index.cfm?fuseaction=home.welcome_

sources as necessary to protect the applicable NAAQS (i.e., state-wide permitting of minor sources); and (3) a permit program to meet the major source permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question).⁸

(1) Enforcement of SIP Measures. As noted earlier in section 110(a)(2)(A), the ODEQ and its Executive Director have the authority to enforce the requirements of the OCAA and any regulations, permits, or final compliance orders. This statute also provides the ODEQ and its Executive Director with general enforcement powers. Among other things, they can investigate regulated entities; issue field citations and compliance orders; file lawsuits to compel compliance with the statutes and regulations; commence civil actions; pursue criminal prosecutions; collect criminal and civil penalties; enter into remediation agreements; and issue emergency orders to cease operations. The OCAA also provides additional enforcement authorities and funding mechanisms.⁹

(2) Minor New Source Review (NSR). The CAA requires the SIP to include measures to regulate construction and modification of stationary sources to protect the NAAQS. The Oklahoma minor NSR permitting requirements have been approved in the SIP.¹⁰

(3) Prevention of Significant Deterioration (PSD) permit program. Oklahoma's PSD program covers all NSR regulated pollutants, as well as the NAAQS subject to our review contained herein, and has been approved by EPA into the SIP.¹¹

⁸ See TSD, beginning on page 6.

⁹ Please see the TSD for our complete analysis and citations to the specific provisions.

¹⁰ EPA is not proposing to approve or disapprove the existing Oklahoma minor NSR program to the extent that it may be inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for EPA to approve the infrastructure SIP for element C (e.g., 76 FR 41076-41079). EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs. Citations for the Oklahoma NSR program are provided in our TSD for this action.

¹¹ See 79 FR 66626, November 10, 2014 and the TSD for further discussion.

(D)(i) Interstate Pollution Transport: There are four requirements the SIP must include relating to interstate transport. The SIP must prohibit emissions within Oklahoma from contributing significantly to the nonattainment of the NAAQS in other states, and from interfering with the maintenance of the NAAQS in other states (section 110(a)(2)(D)(i)(I)). The SIP must also prohibit emissions within Oklahoma both from interfering with measures required to prevent significant deterioration in other states and from interfering with measures required to protect visibility in other states (section 110(a)(2)(D)(i)(II)).

At this time ODEQ has not submitted the infrastructure submittal regarding the prevention of emissions which significantly contribute to nonattainment of the PM_{2.5} NAAQS in other states, and interference with the maintenance of the PM_{2.5} NAAQS in other states (110(a)(2)(D)(i)(I)). We are taking action on the portion of the submittal addressing prevention of significant deterioration in other states and on visibility protection (110(a)(2)(D)(i)(II)). Section 110(a)(2)(D)(i)(II) consists of two provisions, prohibiting emissions which will interfere with measures required to be included in the SIP for any other State to prevent significant deterioration of (1) air quality and (2) protect visibility. Oklahoma has an approved PSD program which satisfies (1) above. The program regulates all NSR pollutants, including GHG, which prevents significant deterioration in nearby states.

We find that Oklahoma has not included measures that conform to the mutually agreed upon regional haze reasonable progress goals. A FIP cannot be relied upon to satisfy this requirement.¹² We are proposing to disapprove this sub-element (often referred to as prong 4) of

¹² We finalized a Federal Implementation Plan (FIP) that in combination with the controls required by the portion of the Oklahoma RH submittal approved in the same rulemaking, would serve to prevent sources in Oklahoma from emitting pollutants in amounts that would interfere with efforts to protect visibility in other states. 76 FR 81728 (December 28, 2011). As explained in the i-SIP guidance, “it is the EPA’s interpretation of sections 110(a)(1) and 110(a)(2) that the EPA cannot give ‘credit’ for the FIP when determining whether an agency” has met its obligations

the i-SIP submission (110(a)(2)(D)(i)(II)) for visibility protection.

(D)(ii) Interstate Pollution Abatement and International Air Pollution: Pursuant to section 110(a)(2)(D)(ii), states must comply with the requirements listed in sections 115 and 126 of the CAA which were designed to aid in the abatement of interstate and international pollution. Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. Oklahoma's PSD program contains the element pertaining to notification of neighboring states of the issuance of PSD permits. Section 115 relates to international pollution abatement. There are no findings by EPA that air emissions originating in Oklahoma affect other countries. Thus, the Oklahoma SIP satisfies the requirements of section 110(a)(2)(D)(ii) for the four NAAQS discussed herein.

(E) Adequate authority, resources, implementation, and oversight: The SIP must provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) compliance with requirements relating to state boards as explained in section 128 of the CAA; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan.

Sections 110(a)(2)(A) and (C), discussed earlier in this rulemaking, also require that the state have adequate authority to implement and enforce the SIP without legal impediments. The State's submittals describe the Oklahoma statutes and SIP regulations governing the various functions of personnel within the ODEQ, including the administrative, technical support,

under these sections. Therefore, while the FIP provides an appropriate level of PM_{2.5} control, the SIP does not and thus our proposal to disapprove for the visibility prong only.

planning, enforcement, and permitting functions of the program. See the TSD for further detail.

With respect to funding, the OCAA and the SIP provide the ODEQ with authority to hire and compensate employees; accept and administer grants or other funds; require the ODEQ to establish an emissions fee schedule for sources in order to fund the reasonable costs of administering various air pollution control programs; and authorizes the ODEQ to collect additional fees necessary to cover reasonable costs associated with processing air permit applications. The EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to, among other things, implement and enforce the SIP. See the OCAA and 27A O.S. 2-5-105.

As required by the CAA, the Oklahoma statutes and the SIP stipulate that any board or body that approves permits or enforcement orders must have at least a majority of members who represent the public interest and do not derive any "significant portion" of their income from persons subject to permits and enforcement orders; and the members of the board or body, or the head of an agency with similar powers, are required to adequately disclose any potential conflicts of interest. See 27A O.S. 2-3-101 (addressing staff) and 27A O.S. 2-3-201 (addressing the Executive Director).

Oklahoma has not delegated authority to implement any of the provisions of its plan to local governmental entities - the ODEQ acts as the primary air pollution control agency.

(F) Stationary source monitoring system: The SIP must provide for the establishment of a system to monitor emissions from stationary sources and to submit periodic emission reports. It must require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from sources. The SIP shall also require periodic reports on the nature and amounts of

emissions and emissions-related data from sources, and require that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

The OCAA and SIP require stationary sources to monitor or test emissions and to file reports containing information relating to the nature and amount of emissions. There also are SIP-approved State regulations pertaining to sampling and testing and requirements for reporting of emissions inventories. In addition, SIP-approved rules establish general requirements for maintaining records and reporting emissions.¹³ The ODEQ uses this information, in addition to information obtained from other sources, to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with SIP-approved regulations and additional EPA requirements. The SIP requires this information be made available to the public. Provisions concerning the handling of confidential data and proprietary business information are included in the SIP-approved regulations. These rules specifically exclude from confidential treatment any records concerning the nature and amount of emissions reported by sources. Please see the Table 4 in the TSD for the specific relevant state regulations.

(G) Emergency authority: The SIP must provide the ODEQ with authority to restrain any source from causing imminent and substantial endangerment to public health or welfare or the environment. The SIP must include an adequate contingency plan to implement the ODEQ's emergency authority.

The OCAA provides the ODEQ with authority to address environmental emergencies. The ODEQ has an "Emergency Episode Plan," which includes contingency measures and these

¹³ A list of such rules and SIP approval dates are provided in Table 4 of the TSD.

provisions are in the SIP (56 FR 5656). The ODEQ has general emergency powers to address any possible dangerous air pollution episode if necessary to protect the environment and public health.

(H) Future SIP revisions: States must have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS. The OCAA authorizes the ODEQ to revise the Oklahoma SIP as necessary, to account for revisions to an existing NAAQS, establishment of a new NAAQS, to attain and maintain a NAAQS, to abate air pollution, to adopt more effective methods of attaining a NAAQS, and to respond to EPA SIP calls concerning NAAQS adoption or implementation.¹⁴

(I) Nonattainment areas: Section 110(a)(2)(I) of the Act requires that in the case of a plan or plan revision for areas designated as nonattainment, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas. There are no areas designated as nonattainment for PM_{2.5} in Oklahoma. In addition, EPA believes that nonattainment area requirements should be treated separately from the infrastructure SIP requirements. The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those required for section 110 infrastructure elements. EPA will take action on any part D attainment plan SIP submissions through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D.

(J) Consultation with government officials, public notification, PSD and visibility protection: The SIP must meet the following three CAA requirements: (1) the interagency

¹⁴ Please see the TSD for our complete analysis and citations to the specific provisions.

consultation requirements found in section 121; (2) the public notification requirements found in section 127; and, (3) prevention of significant deterioration of air quality and visibility protection.

(1) Interagency consultation: As required by the OCAA and the Oklahoma SIP, there must be a public hearing before the adoption of any regulations or emission control requirements, and all interested persons must be given a reasonable opportunity to review the action that is being proposed and to submit data or arguments, and to examine the testimony of witnesses from the hearing. In addition, the OCAA provides the ODEQ the power and duty to advise, consult and cooperate with other agencies of the State, towns, cities, counties, industries, other states, and the federal government regarding the prevention and control of new and existing air contamination sources in the State. Furthermore, the Oklahoma PSD SIP rules mandate that the ODEQ shall provide for public participation and notification regarding permitting applications to any other state or local air pollution control agencies, local government officials of the city or county where the source will be located, tribal authorities, and Federal Land Managers (FLMs) whose lands may be affected by emissions from the source or modification.¹⁵ Additionally, the State's PSD SIP rules require the ODEQ to consult with FLMs regarding permit applications for sources with the potential to impact Class I Federal Areas. The SIP also includes a commitment to consult continually with the FLMs on the review and implementation of the visibility program, and the State recognizes the expertise of the FLMs in monitoring and new source review applicability analyses for visibility and has agreed to notify the FLMs of any advance notification or early consultation with a major new or modifying source prior to the submission of a permit application.

¹⁵ Please see the TSD for our complete analysis and citations to the specific provisions.

(2) *Public Notification:* The ODEQ regularly notifies the public of instances or areas in which any NAAQS are exceeded. Included in the SIP are the rules for ODEQ to advise the public of the health hazard associated with such exceedances, enhance public awareness of measures that can prevent such exceedances, and inform the public on how it can participate in regulatory and other efforts to improve air quality. In addition, as described in the discussion of section 110(a)(2)(B) earlier in this rulemaking, the ODEQ air monitoring website provides quality data for each of the monitoring stations in Oklahoma; this data is provided instantaneously for certain pollutants, such as ozone. The website also provides information on the health effects of all six criteria pollutants.

(3) *PSD and Visibility Protection:* The PSD requirements for this element are the same as those addressed under 110(a)(2)(C) earlier in this rulemaking - the State has a SIP-approved PSD program, so this requirement has been met. The Oklahoma SIP requirements relating to visibility and regional haze are not affected when EPA establishes or revises a NAAQS. Therefore, EPA believes that there are no new visibility protection requirements due to the revision of PM_{2.5} NAAQS in 2012, and consequently there are no newly applicable visibility protection obligations here.

(K) *Air quality and modeling/data:* The SIP must provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

The ODEQ has the authority and duty under the OCAA to conduct air quality research and assessments, including the causes, effects, prevention, control and abatement of air pollution. Past modeling and emissions reductions measures have been submitted by the State and approved into the SIP. Additionally, the ODEQ has the ability to perform modeling for the

NAAQS on a case-by-case permit basis consistent with their SIP-approved PSD rules and EPA guidance. Furthermore, the OCAA empowers the ODEQ to cooperate with the federal government and others concerning matters of common interest in the field of air quality control, thereby allowing the agency to make such submissions to the EPA.¹⁶

(L) Permitting Fees: The SIP must require each major stationary source to pay permitting fees to the permitting authority as a condition of any permit required under the CAA. The fees cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until such a time when a fee program is established by the state pursuant to Title V of the CAA, and is submitted to and is approved by EPA. The State has met this requirement as it has a fully developed fee system in place and approved in the SIP. See also the discussion of section 110(a)(2)(E) earlier in this rulemaking action. Regulation 1.4.1(d) of the Oklahoma Air Pollution Control Regulations provides for permit fees, and was approved by EPA into the Oklahoma SIP on August 25, 1983 (48 FR 38635). The Oklahoma SIP also addresses annual operating fees at OAC 100-5 (see 75 FR 72695).

(M) Consultation/participation by affected local entities: The SIP must provide for consultation and participation by local political subdivisions affected by the SIP.

See the discussion of section 110(a)(2)(J)(1) and (2) earlier in this proposed rulemaking for a description of the SIP's public participation process, the authority to advise and consult, and the PSD SIP public participation requirements. Additionally, the OCAA requires cooperative action between itself and other agencies of the State, towns, cities, counties, industry, other states, affected groups, and the federal government in the prevention and control of air pollution.

¹⁶ Please see the TSD for our complete analysis and citations to the specific provisions.

III. EPA's Evaluation of the Oklahoma SO₂ Interstate Transport Submittal

(D)(i) Interstate Pollution Transport: There are four requirements the SIP must include relating to interstate transport. The SIP must prohibit emissions within Oklahoma from contributing significantly to the nonattainment of the NAAQS in other states, and from interfering with the maintenance of the NAAQS in other states (section 110(a)(2)(D)(i)(I)). The SIP must also prohibit emissions within Oklahoma both from interfering with measures required to prevent significant deterioration in other states and from interfering with measures required to protect visibility in other states (section 110(a)(2)(D)(i)(II)).

States can satisfy the requirement to prevent interference with another state's measures to protect visibility by having an EPA approved Regional Haze Program in place. State agencies may also "elect to satisfy prong 4 by providing, as an alternative to relying on its regional haze SIP alone, a demonstration in its infrastructure SIP submission that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility."¹⁷ Oklahoma did not include such a demonstration with its i-SIP submittal. On December 28, 2011, we finalized a Federal Implementation Plan (FIP) that in combination with the controls required by the portion of the Oklahoma RH submittal approved in the same rulemaking, would serve to prevent sources in Oklahoma from emitting pollutants in amounts that would interfere with efforts to protect visibility in other states (76 FR 81728). On March 7, 2014, we withdrew the Oklahoma RH and Interstate Transport FIPs' applicability to two units,¹⁸ but the FIP provisions applicable to Oklahoma Gas and Electric's Muscogee and Sooner plants remain in place (79 FR 12954). As explained in the i-SIP guidance, "it is the EPA's interpretation of sections 110(a)(1) and

¹⁷ Guidance on Infrastructure State Implementation Plans (SIP) Elements Under Clean Air Act Sections 110(a)(1) and 110(a)(2). September 13, 2013, p. 34.

¹⁸ These are Units 3 and 4 of the Northeastern Power Station in Rogers County, Oklahoma, which is operated by the American Electric Power/Public Service Company of Oklahoma.

110(a)(2) that the EPA cannot give ‘credit’ for the FIP when determining whether an agency” has met its obligations under these sections.

Therefore, while the FIP provides an appropriate level of SO₂ control, the SIP does not and thus our proposal to disapprove for the visibility prong only.

IV. Proposed Action

EPA is proposing to partially approve and partially disapprove the June 16, 2016, infrastructure SIP submission from Oklahoma, which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2012 PM_{2.5} NAAQS.

Based upon review of this infrastructure SIP submission and relevant statutory and regulatory authorities and provisions referenced in these submissions or referenced in the Oklahoma SIP, we believe Oklahoma has the infrastructure in place to address the following required elements of sections 110(a)(1) and (2) to ensure that the 2012 PM_{2.5} NAAQS are implemented in the State:

Sections 110(a)(2)(A), (B), (C), (D)(i)(II) for interference with PSD, (D)(ii), (E)(i), (E)(ii), (F), (G), (H), (J), (K), (L) and (M).

We are not proposing to approve Interstate transport provisions (prongs 1&2): Section 110(a)(2)(D)(i)(I) which were not included in this submission.

We are proposing to disapprove the Interstate transport provisions for visibility protection (prong 4): Section 110(a)(2)(D)(i)(II)

We are also proposing to disapprove the January 28, 2015 SIP submission from Oklahoma for the 2010 Sulfur Dioxide (SO₂) NAAQS only as it addresses Section 110(a)(2)(D)(i)(II) for visibility protection (prong 4).

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. There is no burden imposed under the PRA because this action merely proposes to approve i-SIP provisions that are consistent with the CAA and disapprove i-SIP provisions that are inconsistent with the CAA.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely proposes to approve i-SIP provisions that are consistent with the CAA and disapprove i-SIP provisions that are inconsistent with the CAA; therefore this action will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action merely proposes to approve i-SIP provisions that are consistent with the CAA and disapprove i-SIP provisions that are inconsistent with the CAA; and therefore will have no impact on small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct

effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to disapprove a SIP submission as not meeting the CAA.

H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on

minority, low-income or indigenous populations. This action merely proposes to approve i-SIP provisions that are consistent with the CAA and disapprove i-SIP provisions that are inconsistent with the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Interstate transport of pollution, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 15, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016-27924 Filed: 11/18/2016 8:45 am; Publication Date: 11/21/2016]